

## Patent Specification - How a Single Connector Word Can Decide the “Life or Death” of a Patent?

If you believe that the phrase “**at least one of A, B, and C**” in [a patent specification](#) always means “**A or B or C**”, it may be time to reconsider. In U.S. patent practice, the interpretation of this seemingly simple expression has sparked a debate lasting more than two decades - a debate that remains far from settled today.

The controversy originates from the U.S. Court of Appeals for the Federal Circuit’s landmark 2004 decision in **SuperGuide Corp. v. DirecTV Enters., Inc.** In *SuperGuide*, the court interpreted the phrase to mean “**at least one of A, and at least one of B, and at least one of C**” - solely because of the grammatical structure and one small conjunction: “**and**”. This reading stands in stark contrast to what most would intuitively expect.

For patent drafters and translators in Vietnam, this is not a matter of “stylistic wording”. It can determine the very *survival* of a patent’s scope. A single conjunction or a misplaced listing structure can unintentionally narrow your claims, complicate infringement enforcement, or even open the door for your patent to be attacked on validity grounds.

In this article, the experts at **KENFOX IP & Law Office** do not aim to “teach English grammar”, but to show why an apparently harmless phrase can become a **legal loophole** in a patent specification - and, more importantly, what we as patent drafters and translators must do to avoid losing a case over a single word: “**and**”.

### 1. The Lesson from *SuperGuide*: When “At Least One Of” No Longer Means “Or”

To understand this precedent, we must return to the 2004 *SuperGuide* case. The dispute centered on a patent relating to an electronic program guide system. In *SuperGuide v. DirecTV*, a key claim limitation stated:

“... first means for storing **at least one of** a desired program start time, a desired program end time, a desired program service, and a desired program type”.

The parties’ positions were sharply divided:

- **The patentee (SuperGuide)** argued that this language meant the system only needed to store **any one or some subset** of the four categories of information. This corresponds to the intuitive “**or**” logic that most drafters naturally assume.
- **The accused infringer (DirecTV)** contended that the clause required the system to store **at least one value for each** of the four categories (start time, end time, service, and type) - an “**and**” logic: “**at least one of A, and at least one of B, and at least one of C...**”

In other words:

- **SuperGuide**: only one of the four categories is enough (**disjunctive**).
- **DirecTV**: each category must have at least one value (**conjunctive**).

Ultimately, the U.S. Court of Appeals for the Federal Circuit (**CAFC**) adopted the **narrower interpretation** advanced by DirecTV. Crucially, the court’s reasoning did **not** rely on the technical purpose or inventive concept of the patent. Instead, it rested **entirely on grammar**.

The CAFC held that the phrase “**at least one of,**” functioning as a **modifier**, distributes its effect across **each member** of a list when that list is connected by the conjunction “**and**”.

The court even cited *The Elements of Style*, illustrating that the phrase:

- “in spring, summer, or winter” is interpreted as: “in spring, in summer, or in winter”.

By the same grammatical logic, the court reasoned that: “**at least one of A, B, and C**” should be read as: “**at least one of A, at least one of B, and at least one of C**”.

This ruling formally established what is now known as the **SuperGuide Principle**: **When a modifier (e.g., “at least one of”) is followed by a list connected by “and,” the modifier applies independently to each listed element.**

#### Consequences:

- The **scope of the claim became far narrower** than what the patentee believed it had drafted.
- DirecTV’s system did **not** meet all the required elements → **no infringement** under that interpretation.

Thus emerged the “**SuperGuide rule**”: **If a modifying phrase (such as “at least one of”) precedes a list joined by “and,” it presumptively modifies each item in the list.**

Although later cases have attempted - under highly specific circumstances -to distinguish or limit *SuperGuide*, the decision remains a clear warning: **A single conjunction can flip the entire scope of a patent.**

## 2. Why Does a U.S. Precedent Matter for an Application Filed in Vietnam?

Many practitioners might say: “*I am filing my application before the IP Office of Vietnam - what does a U.S. case have to do with it?*” In reality, in the world of patents, legal risks do not respect national borders. A well-known decision like **SuperGuide** can unexpectedly become a **double-edged sword** for your own specification.

There are at least 04 reasons why a U.S. precedent can quietly influence the fate of a patent application filed in Vietnam:

**[i] The English version is often the “true face” of a patent file:** Most applications filed in Vietnam originate from **PCT filings** or **priority applications** from the U.S., EU, China, or other jurisdictions. The original drafter works in **English**. The Vietnamese version is **merely a translation**. However, when a dispute arises or when the case is examined in an international context, Vietnamese enforcement bodies - and especially opposing parties - **will scrutinize the English text**, even if the Vietnamese translation is the controlling version for prosecution. This is precisely where **SuperGuide-style traps** tend to hide.

**[ii] Errors often come from machine translation or “intuitive” translation:** Seemingly harmless structures can be extremely dangerous. For example, the phrase “**at least one of A, B, and C**” is commonly translated into Vietnamese as “**ít nhất một trong số A, B và C.**” It sounds simple and innocuous - but it reproduces exactly the structure at the heart of the **SuperGuide** trap, where the U.S. court interpreted the phrase **narrowly and strictly**, resulting in a drastically reduced claim scope.

**[iii] In litigation, any reasoning can become a weapon:** In patent litigation, each party leverages every argument available. Your opponent may easily invoke **SuperGuide-type logic** to narrow the claim scope or to argue that the claims are unclear and unenforceable. Vietnam does not apply U.S. case law. But **linguistic logic**, **comparative reasoning**, and **foreign interpretive authorities** can still be powerful persuasion tools in [infringement](#) disputes, invalidation actions, expert opinions, or court hearings.

**[iv] The more ambiguous the specification, the weaker the enforceability:** The more ambiguous a patent specification is, the easier it is to attack its enforceability. Enforcement agencies, courts, and expert examiners will be forced to “bend the language” to interpret your claims. The messier the wording, the broader the room for argument - and the greater the cost, uncertainty, and litigation risk.

### 3. Recommendations for Inventors: Do Not Force Others to Guess the "Idea in Your Head"

In the patent world, **words define the boundaries of rights**. Yet inventors often focus on the technical solution rather than the wording - rarely noticing the linguistic "traps" that can cause a patent to collapse. With just a few simple habits, you can significantly reduce risks throughout the protection process:

**[i] Make clear whether you mean "OR" or "AND":** Avoid vague statements such as *"I want to protect A, B, C"*. For a patent attorney or representative, such phrasing is like standing at a crossroads without knowing which direction to turn. Be explicit:

- *"The product may include only A, or only B, or only C, or any combination thereof"*. → **Disjunctive structure (OR)**; broad and flexible scope.

or:

- *"The system requires A, B, and C in order to function"*. → **Conjunctive structure (AND)**; narrow and strict scope.

A single distinction between **AND** and **OR** can completely reshape the claim scope—determining whether the protection is broad or narrow.

**[ii] Provide concrete examples to prevent misinterpretation of your technical intent:** The inventor understands the technology best, but the person drafting the claims **cannot read your mind**.

For example: *"In practice, we may sell a version containing only module A, a version containing only module B, or a version containing A+B. But the system must include at least one of the three modules to operate."*

Such concrete statements help the claim drafter understand:

- What is **optional**,
- What is **mandatory**,
- What **broadens** the scope,
- And what helps avoid the **SuperGuide trap**.

The clearer the example, the more precise the language.

**[iii] Do not "DIY" English claim language unless you are absolutely certain:** The claim section is **not** the place to experiment with English grammar. Misusing phrases like **"and/or," "at least one of," "one or more of"** can distort the claim scope - or worse, give your opponents powerful tools to attack your patent. If you are unsure:

- Describe the technical features in **plain, natural language**.
- Let the claim drafter handle the legal-linguistic structure, which requires absolute precision.

In short, **an inventor does not need to be a linguist**. But by being a bit clearer, providing one or two practical examples, and avoiding ad-hoc English claim drafting, you can make your patent application much stronger - and far safer- on its journey toward protection.

### 4. Recommendations for Patent Practitioners: Draft Language That Leaves "No Room for Argument"

In patent drafting, language does more than describe - it **defines the boundaries of exclusivity**. A single ambiguous phrase can become a fatal weakness that allows an opponent to invalidate an entire claim set. Therefore, IP practitioners must treat words as **strategic weapons**, not merely drafting tools.

**[i] When drafting in English (for PCT/priority filings):** Avoid using **"at least one of A, B, and C"** - a *sensitive* phrase that easily triggers *SuperGuide*-type disputes.

If you intend a **disjunctive ("OR")** meaning, use:

- "... comprising at least one of A, B, or C;"
- Or the classic, safe construction: "... comprising one or more selected from the group consisting of A, B, and C."

If you intend a **conjunctive ("AND")** meaning, use:

- "... comprising at least one A, at least one B, and at least one C;"

If, for historical reasons, you must keep the ambiguous wording, add a **Definitions** clause:

- "As used herein, the phrase 'at least one of A, B, and C' means at least one of A and/or at least one of B and/or at least one of C, unless the context clearly requires otherwise."

This one sentence can prevent an entire claim set from being misinterpreted.

**[ii] When translating into Vietnamese for filing in Vietnam:** Do not translate mechanically. [Patent translation](#) is the reconstruction of **logical structure**, not dictionary matching.

If the English text clearly expresses **OR**:

- "... comprising at least one of A, B, or C" → "... bao gồm ít nhất một trong A, B hoặc C";
- Or:  
"... bao gồm một hoặc nhiều thành phần được lựa chọn từ nhóm gồm A, B và C".

If the English text expresses **AND**:

- Translate literally, without shortening: "... bao gồm ít nhất một A, ít nhất một B và ít nhất một C."

If the original text contains **SuperGuide-style ambiguity**:

- Consult the client immediately: do they intend OR or AND?
- If the text cannot be amended:
  - ✓ Translate as: "*ít nhất một trong A, B và C*"
  - ✓ Add a **safety valve** in the Vietnamese specification: "*Các thành phần A, B, C có thể được sử dụng riêng rẽ hoặc theo bất kỳ tổ hợp nào, miễn đáp ứng chức năng nêu tại đây.*"
  - ✓ Flag internally that this structure carries an elevated risk of interpretive dispute.

**[iii] Design the patent specification to minimize risk if the claims are later narrowed:** A strong specification not only supports examination - it becomes a **critical buffer** when opponents attempt to narrow or attack the claim scope. Smart reinforcement techniques include:

- **List all reasonable variants** in the embodiments: Only A; only B; only C; A+B; A+C; B+C; A+B+C (where technically appropriate).
- **Use "insurance sentences"** such as: "*In the embodiments described, the components may be used individually or in any combination, unless otherwise specified.*"

This way, even if enforcement bodies later adopt a narrow interpretation, you still have a **legal cushioning layer** within the specification to preserve a minimum scope of protection.

## 5. Recommendations for Translators: You Are Not Just a "Word Converter"

Patent translation is a highly specialized discipline - **as precise as contract drafting, yet as subtle as scientific writing**. Translating specifications and claims is not about replacing words; it is about **managing legal risk**. Every term you choose - every seemingly minor phrasing decision - can carry legal consequences worth millions of dollars.

Here are several essential principles for survival:

**[i] Always ask yourself: Is this “OR”, “AND”, or “AND/OR”?** If you cannot determine the intended logic - ask. If you are unsure - ask again. If the context is ambiguous -seek clarification from the attorney or the client.

One short question can prevent a major lawsuit. A **five-second inquiry** can avoid a **five-year dispute**.

**[ii] Do not assume that “and” always means “và” or “or” always means “hoặc”**

- “and/or” does not always cleanly translate to “và/hoặc” in Vietnamese.
- “at least one of A, B, and C” must *never* be machine-translated - it is one of the most dangerous phrases in patent language.

These terms may look simple, but they often carry **high-stakes interpretive risks**, especially in jurisdictions influenced by *SuperGuide*-type reasoning.

**[iii] Maintain strict terminology consistency throughout the entire document**

Using “**hoặc**” in one section but “**và/hoặc**” in another for the same structure is effectively creating internal contradictions. For example: Section 3.1 → “**hoặc**”; Section 5.2 → “**và/hoặc**” for the *same underlying pattern*. Inconsistency does not just weaken clarity - **you are giving the opposing party ammunition to attack the patent**.

**[iv] Flag risky structures internally**

- If you spot a phrase that may trigger *SuperGuide*-type ambiguity, annotate it and alert the legal team.
- A skilled translator does not merely “translate correctly” - they **identify and escalate linguistic risks** before they become legal vulnerabilities.

In the patent pipeline, **you are the frontline of defense** in ensuring that the resulting patent is strong, enforceable, and safe from textual pitfalls.

## 6. A Quick Checklist Before Filing a Patent Application in Vietnam

Before finalizing the application (especially the translation), make sure to:

**[i] Re-scan the entire claim set**

- Look for phrases such as “**at least one of...**,” “**one or more...**,” “**and/or...**”
- Ensure that *each* instance is intentional—not the result of habit or mechanical drafting.

**[ii] Compare the Vietnamese version with the English original (if available)**

- Avoid situations where the Vietnamese translation unintentionally **broadens** or **narrows** the logic compared to the original text.
- Such inconsistencies can easily trigger the risk of “**added matter**” or “**beyond the original disclosure**.”

**[iii] Re-read [the specification](#) from the perspective of... the accused infringer**

Ask yourself: If I were the defendant, which structure would I exploit to argue that:

- The claim is **too narrow**, so I do **not** infringe; or
- The claim is **ambiguous, unclear, or unenforceable**?

If you can spot a potential weakness while reading as a defendant, **fix it immediately** during the drafting/translation stage. Don’t wait until the dispute reaches the courtroom.

**Conclusion: Never Underestimate a Conjunction**

A single conjunction can shape the entire scope of protection. The *SuperGuide* story reminds us of a deceptively simple but profoundly important truth: in patent drafting, **“and/or” is not just grammar - it is the boundary of an asset, the perimeter of intellectual property rights.**

For inventors, practitioners, attorneys, and translators in Vietnam, the practical lessons are clear:

- **Avoid structures that case law has shown to be inherently contentious**, such as *“at least one of A, B, and C.”*
- **Draft and translate with maximum clarity**, leaving opponents little room to argue for a narrower interpretation or to attack the validity of the claims.
- **Remember that drafting and [translating patent documents](#) is a sophisticated legal task**, not merely “rewriting an idea in English or Vietnamese.”

A single conjunction can broaden or narrow the scope of protection. Treat every word in a patent specification as a legal instrument - deliberately crafted to safeguard the full value of innovation.

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